

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

IN RE:

Case No. 16-20516-AJC  
Chapter 7  
(Jointly Administered)

PROVIDENCE FINANCIAL INVESTMENTS,  
INC.  
PROVIDENCE FIXED INCOME FUND, LLC,

Case No. 16-20517-AJC

Debtors.

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MARIA YIP, as Trustee of Providence  
Financial Investments, Inc. and Providence  
Fixed Income Fund, LLC,

Adv. Pro. No.

Plaintiff,

v.

MAXWELL ORTIZ VEGA and ELITE MAX  
CONSULTING PSC, a Puerto Rico professional  
corporation,

Defendants.

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**ADVERSARY COMPLAINT TO AVOID AND RECOVER  
FRAUDULENT TRANSFERS AND OTHER RELIEF**

Maria Yip, the Chapter 7 Trustee for the bankruptcy estate of Providence Financial Investments, Inc. (“Providence Financial”) and Providence Fixed Income Fund, LLC (“Providence Fund”), files this Adversary Complaint against Maxwell Ortiz Vega and Elite Max Consulting PSC and alleges:

**JURISDICTION AND VENUE**

1. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) (A), (H), and (O) and an adversary proceeding pursuant to Fed. R. Bankr. P. 7001 *et seq.*

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157(a), 28 U.S.C. §§157(b)(2), and 28 U.S.C. § 1334.

3. Venue is proper pursuant to 28 U.S.C. §1409 and other applicable law.

### **PARTIES**

4. On July 28, 2016, Providence Financial filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”).

5. On July 28, 2016, Providence Fund filed a voluntary petition for relief under Chapter 7 of Title 11 of the Bankruptcy Code.

6. Maria Yip is the duly appointed Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate of Providence Financial and Providence Fund (jointly, the “Debtors”).

7. Maxwell Ortiz Vega (“Ortiz”) is an individual residing in Toa Alta, Puerto Rico.

8. Elite Max Consulting PSC (“Elite Max”) is a professional corporation formed under the laws of Puerto Rico with its principal place of business in Toa Alta, Puerto Rico.

### **FACTUAL ALLEGATIONS**

#### **A. The Bankruptcy Cases**

9. On July 28, 2016, the Trustee was appointed as the Chapter 7 Trustee over the Debtors.

10. The Debtors are being jointly administered.

11. Following her appointment and review of the Debtors’ petitions, the Trustee obtained electronic accounting files, including balance sheets, income statements, general ledger reports, accounts payable reports and accounts receivable reports, records reflecting intercompany transfers between and among the Debtors and certain affiliates, and a report of

amounts invested by each of the investors, including names, addresses, dates of original investment, and promised rates of returns.

12. The Trustee continues to obtain information through third-party subpoenas.

13. The Trustee's Accountants have reviewed and analyzed the Debtors' books and records which detail substantial transfers of Debtors' assets to Defendants and others.

**B. The Debtors and Their Affiliates**

14. The Debtors and certain of the Debtors' affiliates maintained a public website ([www.provfinance.com](http://www.provfinance.com)) where the Debtors and their affiliates were described therein as the "Providence Companies" and collectively held themselves out as a diversified global commercial group of companies with over 30 years of experience in financial services, receivables financing, and trade in Brazil and other global emerging markets.

15. According to the website, Antonio Buzaneli was the CEO and co-founder of the "Providence Companies" and the director of both Providence Investment Management International Limited and Providence Investment Funds PCC Limited.

16. The principal place of business of Providence Financial and Providence Fund was located in Miami-Dade County, Florida at all relevant times.

17. While Providence Financial, Providence Fund, and their affiliates purported to conduct business throughout the world, they listed their "Global Headquarters" as being in Key Biscayne, Florida.

**C. The Investments Marketed and Sold by Providence**

18. Providence Financial and Providence Fund, by themselves and through their affiliated companies (collectively, "Providence"), were in the business of the unregistered sale of securities in the form of promissory notes which typically promised to pay annual returns of

approximately 12% or 13% (and sometimes higher) based on “factoring” alleged accounts receivable in Brazilian companies.

19. Beginning in or about 2010, Providence offered and sold the promissory notes to investors throughout the United States, including in Florida.

20. In order to market and sell the promissory note investments, Providence recruited what Providence referred to as its “originators.”

21. The originators were promised commissions, which were denominated “referral fees,” for successfully introducing potential investors who ended up issuing funds to Providence to invest in a “commercial loan” (*i.e.*, the promissory notes).

22. Providence promised the originators the payment of such commissions only if each potential investor was “directly” introduced by the originator.

23. The vast majority, if not all, of the originators were not registered representatives of any broker or dealer registered with the United States Securities and Exchange Commission (the “SEC”).

24. The SEC has determined that the promissory notes that Providence provided to investors, and which were procured through the efforts of the originators, were “securities” within the meaning of the federal securities laws and that no registration statement for the notes has been filed with the SEC.

25. Providence and its originators provided prospective investors with written materials purporting that the investment in the promissory notes was a safe and low risk investment.

26. For example, in an “Executive Memorandum,” which claimed to be “a formal presentation of the Providence Fixed Income Fund (‘the Fund’) to assist investors in the

evaluation of personal financial decisions,” Providence outlined investments in “short-term notes” where Providence “has been able to develop a smart high yield investment instrument where the amount of risk in the investment is proportionally less than [sic] the favorable high ROI [return on investment] actually experienced” and that a 12% return is a high return but the investment was “considered low to moderate risk”; in fact, contrary to these representations, the proposed investments were high risk, and legitimate high returns were not, and were not going to be, “actually experienced.”

27. The Executive Memorandum also represented that “[t]he proceeds of the Note shall be used for the *sole purpose* of providing working capital in the form of an intercompany loan to the Issuer’s Brazilian Subsidiaries or its affiliates which will use the proceeds of the loan to acquire receivables or financial instruments” (emphasis added); unbeknownst to the investors, at the time of that statement and thereafter, Providence was not using the proceeds of the notes for the “sole purpose” of providing working capital but rather the proceeds were diverted to other uses.

28. As part of its suggesting that the investment was safe, the Executive Memorandum described factoring as a financial transaction whereby a business sells its accounts receivable to a third party (the factor) at a discount, and the factor obtains the rights associated with the receivables.

29. Another memorandum (titled “PROVIDENCE FINANCIAL FIXED INVESTMENTS INC. HIGH YIELD FIXED RETURNS”) (the “Information Memorandum”), which was provided to prospective investors, touted the profitability of receivables factoring in Brazil and, in a section titled “Objectives,” it stated that Providence’s “portfolio strategy is to

generate attractive, uncorrelated, fixed absolute returns from participating in the receivable financing of small and medium sized businesses (SME) in Brazil.”

30. The Information Memorandum also stated, in a section called “Growth Unlimited,” that one of Providence’s “main philosophies” is to “[p]rovide investment safety with real high yield returns.”

31. The Executive Memorandum, the Information Memorandum, and similar documents were used by Providence and the originators, including Defendants, to market the product to potential investors.

32. The principals of Providence knew, at the time when the statements were made, that the statements about the investments being safe and low risk were not true.

33. Generally, Providence’s marketing strategy was to target unsophisticated investors who, in Providence’s estimation, were unlikely to be in a position, or have the expertise, to question the misleading representations being made by Providence and its originators.

**D. Ortiz’s and Elite Max’s Participation**

34. Ortiz was one of the originators recruited by Providence.

35. Ortiz circulated business cards with his name, with the title of “Business Development,” which listed the name “Providence Companies,” a Miami-Dade County, Florida phone number, and an address in Key Biscayne, Florida.

36. Ortiz is the principal of Elite Max and used that entity to act as an originator for Providence.

37. Ortiz performed his originator function in both his own name and under the name of Elite Max.

38. Defendants and the other originators were the lifeblood of the fraud perpetrated on investors regarding the Providence notes.

39. Defendants were among Providence's highest paid originators.

40. In introducing investors to Providence, Defendants were promised commissions between 4% and 5% per year of the funds invested by such investors.

41. Defendants played a key role in luring investors to Providence with the false promises of high return with low risk.

42. As part of their efforts to sell the Providence notes, Defendants were involved in the process of interacting with investors and potential investors, accepting signed applications, transmitting promissory notes, and assisting in the transfer of investor funds.

43. Defendants received the payments, which are set forth on Exhibit A hereto, from the Debtors, through Providence, as a result of their activities as an originator receiving commissions attributed to the sale of promissory notes to investors.

44. In light of the diversion of funds to Providence's principals and originators (such as Defendants), at all relevant times Providence's obligations to the investors greatly exceeded Providence's assets to repay investors, and thus the Debtors were insolvent at all relevant times.

45. As of December 2015, the Debtors had amassed over 800 promissory notes, pledging re-payment to more than 400 investors located in the United States (many of whom were victimized by Defendants) who collectively invested at least \$64 million.

46. The outstanding Providence notes sold through Defendants are essentially worthless in light of the financial condition of the Debtors.

47. The principals of Providence, with the assistance of Defendants, concealed their fraudulent activities from third parties, including investors and regulatory authorities.

48. It was not until after the SEC commenced proceedings in June 2016, the Debtors' bankruptcy filing in July 2016, and the Trustee's subsequent investigation that the fraudulent conduct (of which the payment of commissions to originators played a significant and integral part) was revealed.

49. All conditions precedent to the filing of this action have been performed, have been waived, have been satisfied, or otherwise occurred.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Fraudulent Transfer-11 U.S.C. § 548(a)(1)(A)**

50. The Trustee re-alleges and incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. This is an action against Defendants seeking to avoid and recover transfers under federal bankruptcy law made by or on behalf of the Debtors with the intent to hinder, delay, or defraud creditors.

52. Pursuant to 11 U.S.C. § 548, the Trustee may avoid any transfer of an interest of the Debtors in property, or any obligation incurred by the Debtors, that was made or incurred on or within 2 years before the date of the filing of the petition, if the Debtors voluntarily or involuntarily made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the Debtors were or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

53. The transfers to Defendants, including those in the form of purported commission payments made to Defendants, were made by or on behalf of the Debtors with actual intent to hinder, delay, or defraud creditors of the Debtors.

54. Defendants, lacking good faith, received the payments, including the commissions.

55. The Debtors owned a legal or equitable interest in the funds that were the subject of the transfers.

56. The Debtors made transfers to, or for the benefit of, Defendants within the two-year period prior to the petition date.

57. The Trustee can avoid the transfers pursuant to Section 548 of the Bankruptcy Code and recover the value thereof for the benefit of the Estate pursuant to Section 550 of the Bankruptcy Code.

WHEREFORE, the Trustee requests that the Court enter judgment against Defendants (a) setting aside all fraudulent transfers, including the commissions obtained by Defendants, and, if necessary, imposing a constructive trust and/or equitable lien on the funds or other assets traceable to such transfers, (b) providing for a money judgment against Defendants in the amount of the funds transferred to Defendants, together with interest thereon from the date of the transfers, (c) providing for a money judgment against Defendants for the costs of this action, (d) disallowing any claims that Defendants may have against the Debtors, and (e) for any other, further relief this Court deems equitable and just.

**COUNT II**  
**Fraudulent Transfer-11 U.S.C. § 548(a)(1)(B)**

58. The Trustee re-alleges and incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

59. This is an action against Defendants seeking to avoid and recover transfers under federal bankruptcy law made by or on behalf of the Debtors.

60. Pursuant to 11 U.S.C. § 548, the Trustee may avoid any transfer of an interest of the Debtors in property, or any obligation incurred by the Debtors, that was made or incurred on or within 2 years before the date of the filing of the petition, if the Debtors voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer or obligation and (a) were insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation, (b) were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the Debtors was an unreasonably small capital, (c) intended to incur, or believed that the Debtors would incur, debts that would be beyond the Debtors' ability to pay as such debts matured, or (d) made such transfers to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

61. The transfers to Defendants, including those in the form of purported commission payments, were made by or on behalf of the Debtors, and the Debtors received less than reasonably equivalent value in exchange for the transfers made to Defendants.

62. Defendants, lacking good faith, received the commissions.

63. The Debtors owned a legal or equitable interest in the funds that were the subject of the transfers.

64. The Debtors made transfers to, or for the benefit of, Defendants within the two-year period prior to the petition date.

65. When payments were made to Defendants, the Debtors (a) were insolvent on the date that such transfers were made or such obligation was incurred, or became insolvent as a result of such transfers or obligations, (b) were engaged in business or a transaction, or were

about to engage in business or a transaction, for which any property remaining with the Debtors was an unreasonably small capital, (c) intended to incur, or believed that the Debtors would incur, debts that would be beyond the Debtors' ability to pay as such debts matured, or (d) made such transfers to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

66. The Trustee can avoid the transfers pursuant to Section 548 of the Bankruptcy Code and recover the value thereof for the benefit of the Estate pursuant to Section 550 of the Bankruptcy Code.

WHEREFORE, the Trustee requests that the Court enter judgment against Defendants (a) setting aside all fraudulent transfers of commissions obtained by Defendants and, if necessary, imposing a constructive trust and/or equitable lien on the commissions or other assets traceable to such transfers, (b) providing for a money judgment against Defendants in the amount of the commissions transferred to Defendants, together with interest thereon from the date of the transfers, (c) providing for a money judgment against Defendants for the costs of this action, and (d) disallowing any claims that Defendants may have against the Debtors, and (e) for any other, further relief this Court deems equitable and just.

### **COUNT III**

#### **Fraudulent Transfers-Fla. Stat. § 726.105 and 11 U.S.C. § 544**

67. The Trustee re-alleges and incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

68. This is a claim to avoid and recover fraudulent transfers pursuant to Sections 726.105(1)(a) and 726.105(1)(b), Florida Statutes, and 11 U.S.C. § 544, against Defendants.

69. The Debtors transferred a substantial amount of commissions to Defendants.

70. At the time of the transfers to Defendants, Buzaneli and other insiders were operating the business of the Debtors as a classic fraudulent scheme and thus had actual intent to delay, hinder, and defraud creditors and, in fact, made the transfers to hinder, delay, and defraud creditors.

71. At the time of making the transfers of commissions, the Debtors were insolvent.

72. The payments of commissions to Defendants were made without receiving a reasonably equivalent value in exchange for the transfers or obligations, and the Debtors were engaged or were about to engage in a business or a transaction for which the remaining assets of the Debtors were unreasonably small in relation to the business or transaction, or they intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

73. Defendants acted in bad faith when they received the commissions from the Debtors.

74. Defendants could not have legitimately earned commissions, as Providence was operating a fraudulent scheme, and Defendants knew or should have known that their commissions were the by-product of bogus investments which Defendants assisted in inducing.

75. Defendants did not provide any valid reasonably equivalent consideration or value to support the diversion of commissions received by Defendants.

76. As a proximate result of the transfers of commissions to Defendants, the Debtors' Estate has been diminished.

77. The improper payment of the commissions has contributed to the fact that the remaining assets of the Debtors are insufficient to pay the Debtors' liabilities.

78. The transfers to Defendants by way of commissions received and retained by Defendants are avoidable pursuant to Chapter 726, Florida Statutes.

79. This action is timely as the Trustee has filed this action within four years after such transfers were made or, if later, within one year after the transfers were or could reasonably have been discovered by the Trustee because the transfers were made with the intent to hinder, delay, or defraud creditors.

WHEREFORE, the Trustee requests that the Court enter judgment against Defendants (a) setting aside all fraudulent transfers to Defendants, including in the form of commission obtained by Defendants, and, if necessary, imposing a constructive trust and/or equitable lien on the commissions or other assets traceable to such transfers, (b) providing for a money judgment against Defendants in the amount of the commissions transferred to Defendants, together with interest thereon from the date of the transfers, (c) providing for a money judgment against Defendants for the costs of this action, and (d) for any other, further relief this Court deems equitable and just.

**COUNT IV**  
**Fraudulent Transfers-Fla. Stat. § 726.106 and 11 U.S.C. § 544**

80. The Trustee re-alleges and incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

81. This is a claim to avoid and recover fraudulent transfers pursuant to Section 726.106, Florida Statutes, and 11 U.S.C. § 544, against Defendants.

82. The Debtors transferred a substantial amount of commissions to Defendants.

83. At the time of the transfers to Defendants, the Debtors made the transfers or incurred the obligations without receiving a reasonably equivalent value in exchange for the

transfers or obligations and the Debtors were insolvent at that time or the Debtors became insolvent as a result of the transfers or obligations.

84. The payments of commissions to Defendants were made without receiving a reasonably equivalent value in exchange for the transfers or obligations, and the Debtors were engaged or were about to engage in a business or a transaction for which the remaining assets of the Debtors were unreasonably small in relation to the business or transaction, or they intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

85. Defendants did not provide any valid reasonably equivalent consideration or value to support the diversion of commissions received by Defendants.

86. As a proximate result of the transfers of commissions to Defendants, the Debtors' Estate has been diminished.

87. The improper payment of the commissions has contributed to the fact that the remaining assets of the Debtors are insufficient to pay the Debtors' liabilities.

88. The transfers to Defendants by way of commissions received and retained by Defendants are avoidable pursuant to Chapter 726, Florida Statutes.

WHEREFORE, the Trustee requests that the Court enter judgment against Defendants (a) setting aside all fraudulent transfers to Defendants, including in the form of commissions obtained by Defendants, and, if necessary, imposing a constructive trust and/or equitable lien on the commissions or other assets traceable to such transfers, (b) providing for a money judgment against Defendants in the amount of the commissions transferred to Defendants, together with interest thereon from the date of the transfers, (c) providing for a money judgment against

Defendants for the costs of this action, and (d) for any other, further relief this Court deems equitable and just.

**COUNT V**  
**Unjust Enrichment**

89. The Trustee re-alleges and reincorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

90. This is a claim for unjust enrichment against Defendants.

91. The Debtors' funds were the source of commissions which were paid to Ortiz between June 20, 2013, and October 23, 2014, amounting to at least \$91,361.26.

92. The Debtors' funds were the source of commissions which were paid to Elite Max between May 26, 2015, and May 17, 2016, amounting to at least \$166,605.79.

93. The commissions received and accepted by Defendants conferred benefits upon Defendants, who knew or should have known that the commissions were derived from proceeds of the defrauding of investors in which Defendants participated.

94. It is inherently unfair and inequitable that commissions generated as a result of defrauding investors are retained by and used to personally benefit individuals or entities like Defendants, who contributed to cause the investors' losses and losses to the Debtors' Estate, rather than being returned to the Estate.

95. As a direct and proximate result of Defendants' retention of commissions, the Estate has been diminished, and, under the circumstances, equity dictates that the commissions received be returned to the Trustee for the benefit of the Estate.

WHEREFORE, the Trustee requests that this Court enter judgment against Defendants (a) providing for a money judgment against Defendants in the amount of the commissions transferred to Defendants, together with interest thereon from the date of the transfers, (b)

providing for a money judgment against Defendants for the costs of this action, and (c) for any other, further relief this Court deems equitable and just.

**AKERMAN LLP**

Three Brickell City Centre  
98 Southeast Seventh Street  
11<sup>th</sup> Floor

Miami, Florida 33131

Phone: (305) 374-5600

Fax: (305) 374-5095

By: /s/ Bryan T. West

Brian P. Miller

Florida Bar No.: 0980633

E-mail: [Brian.Miller@akerman.com](mailto:Brian.Miller@akerman.com)

Bryan T. West

Florida Bar No.: 83526

E-mail: [Bryan.West@akerman.com](mailto:Bryan.West@akerman.com)

*Counsel for Trustee*